

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

Gary Auritt,

Plaintiff;

v.

Shannon Auritt,
Kathleen Hamilton &
Take A Shower LLC

Defendants.

COMPLAINT

Civil Action No. _____
Injunctive Relief Requested

Plaintiff Gary Auritt, through his attorney, files this complaint against the Defendants, making statements below based on his personal belief as to himself and on information and belief as to the conduct of the Defendants.

PARTIES

1. Plaintiff Gary Auritt (Plaintiff) is an adult individual, who resides in Cape Elizabeth, Maine.
2. Defendant Shannon Auritt is an adult individual, who is the ex-wife of Plaintiff Gary Auritt. She resides in Cape Elizabeth, Maine.
3. Based on information and belief, Defendant Kathleen Hamilton is an adult individual, who resides in Maine as well as Florida.

4. Defendant Kathleen Hamilton is the mother of Defendant Shannon Auritt.

5. Based on information and belief, Take A Shower LLC is a Florida limited liability company, which has business operations in the house where Defendant Shannon Auritt resides in Cape Elizabeth, Maine.

JURISDICTION & VENUE

6. This court has subject matter jurisdiction pursuant to the following authority: 15 U.S.C. § 1125(a) and (d); 28 U.S.C § 2201; 28 U.S.C. § 1331; 28 U.S.C. § 1338 (a) and (b); and 28 U.S.C. § 1367(a).

7. Venue is proper under 28 U.S.C. § 1391 (b) and (c).

SUMMARY

8. Plaintiff Gary Auritt is seeking to enjoin Defendant Shannon Auritt and Kathleen Auritt from commercially using the term “Fire Hydrant Spa Shower Head” which is similar to the term or mark that he originated to sell shower heads years before he met Shannon or Kathleen. In addition, he is asking the court to enjoin Defendants from using the name Take A Shower LLC as their company name and “take-a-shower.com” as a domain name diverting web traffic to their website, which sells shower heads and therefore infringes on his federally registered trademark “takeashower.com”.

BACKGROUND

9. From 1985-1989, Plaintiff Gary Auritt worked at Water, Inc. in Northborough, Massachusetts for Dr Frederick Fienstein, doing marketing and design work on shower heads for water conservation.

10. In July of 1989, Plaintiff Gary Auritt started in Boston, MA his own business of designing, manufacturing, and marketing shower heads specifically for low water pressure.

11. In approximately 1992, a customer called Plaintiff Gary Auritt and told him how happy he was with the new shower head he purchased. He said it felt like he was showering under a “fire hydrant.” As a result, Plaintiff Gary Auritt immediately started using the term “Fire Hydrant Shower Head” to market and sell his shower heads.

12. When the internet was in its infancy in the 1990’s, Plaintiff Gary Auritt tried to register “watermanagement.com” as his web address. As it, and every reasonable version of it, had been taken, he instead registered “takeashower.com”.

13. In 1999, Plaintiff Gary Auritt worked with web designer, Jason Brindel in Rowley, MA to develop the website takeashower.com, which went live, on-line that year.

14. Plaintiff Gary Auritt first met Defendant Shannon Auritt (then Shannon Hamilton) in the winter of 2003. At that time she was

working in IT for a large insurance company in Hartford, CT, and living in Southington, CT. She told me Plaintiff Gary Auritt that she had a college degree in computer science.

15. When Plaintiff Gary Auritt first met Defendant Shannon Auritt he discussed his business, Water Management, and the sale of high pressure shower heads at length.

16. Almost immediately thereafter, Defendant Shannon Auritt would visit Plaintiff Gary Auritt on weekends at many of the trade shows and fairs where he displayed his shower head products.

17. Defendant Shannon Auritt told Plaintiff Gary Auritt that her mother was a retired elementary school teacher and that her father was a former prison guard. She told Plaintiff Gary Auritt that both were now retired as a result of doing well in the stock market in the 1990's.

18. At no point did Defendant Shannon Auritt or anyone else ever mention to Plaintiff Gary Auritt that her family operated a shower head business.

19. Plaintiff Gary Auritt first met Defendant Shannon Auritt's parents, Glenn and Kathleen Hamilton, in the summer of 2003. They lived just down the street from Shannon in Southington, CT.

20. Upon their initial dinner meeting, Defendant Shannon Auritt and her parents questioned Plaintiff Gary Auritt about his shower

head business. Defendant Kathleen Hamilton spoke briefly about her decades long career as an elementary school teacher. Glenn Hamilton told Plaintiff Gary Auritt numerous stories about being a prison guard in CT and how tough and violent it was. At no point during this dinner did anyone in the Hamilton family mention that they too were in the shower head business. In fact, the Hamiltons asked Plaintiff Gary Auritt if they could buy some shower heads from him for their home.

21. During the three years that Plaintiff Gary Auritt and Defendant Shannon Auritt dated no one in her family ever mentioned a word about being engaging in the shower head business. A number of people in Defendant Shannon Auritt's family wanted to acquire Plaintiff Gary Auritt's shower heads for their homes.

22. Defendant Shannon Auritt and Plaintiff Gary Auritt decided to move to Maine in 2005. As a result, Defendant Shannon Auritt secured a position in IT for TD Bank at their corporate offices in Falmouth, ME.

23. Plaintiff Gary Auritt and Defendant Shannon Auritt were married on May 20, 2007 in Portland, Maine. Defendant Shannon Auritt got pregnant in 2008. Twin sons were born to the couple in September, 2009.

24. Plaintiff Gary Auritt worked on expanding his company as

a result of having a family. He hired a full time Web/IT company, Bridgeworks Creative, in Bozeman, MT to handle all of his web and IT work for the shower head business.

25. In May of 2013 and unbeknownst to Plaintiff Gary Auritt, Defendant Shannon Auritt left Maine with their twin boys. Several weeks later she filed a Protection From Abuse action (PFA) against Plaintiff Gary Auritt claiming child abuse, child molestation, and spousal abuse. This was proven false after a one day court hearing in CT.

26. In October 2013, Defendant Shannon Auritt filed a second PFA in Portland, Maine, essentially alleging the same things as she previously claimed in CT. The court granted a temporary PFA order and Plaintiff Gary Auritt was forced to leave his family home immediately, which is where he conducted his shower head business.

27. During the 10-day PFA period, Defendant Shannon Auritt and/or her parents stole all of Plaintiff Gary Auritt's business computers, files, records, inventory, specialized tools, etc. At the time, Plaintiff Gary Auritt was living in a hotel. In a half day court hearing in Portland, ME this PFA was also denied and proven false.

28. On December 9, 2014, the U.S. Patent and Trademark Office awarded Plaintiff Gary Auritt the trademark "takeashower.com".

29. After a 3 1/2 day hearing, Judge Peter Darvin in the Maine

District Court granted a divorce to Plaintiff Gary Auritt and Defendant Shannon Auritt. Among other things, Judge Darvin ruled on July 21, 2015 as follows: "Gary Auritt is hereby awarded the business known as Water Management, doing business as "takeashower", and the product name 'fire hydrant showerheads' and all assets in and related to said business, including but not limited to the name and website 'takeashower.com.'

Gary Auritt started and developed this business prior to the marriage, although the business was developed and grew due to the efforts of both parties during the marriage. The nonmarital component is set aside to Gary Auritt and he is awarded the entire portion of the marital interest in the business and its assets."

30. Judge Darvin noted in the divorce judgment that: "The value of the [shower head] business is essentially the work product of Gary Auritt, the added value created by his labor and the business relationships he has developed over the years."

31. Judge Darvin also stated in the divorce judgment: "The evidence presented supports a finding that Shannon Auritt committed economic misconduct through a pattern of behavior designed to undermine the [shower head] business. First, the court finds that Shannon removed specialized tools, equipment and business data and records from the marital home during a time she had exclusive possession

of the home. These tools, equipment and records related to the business were essential to its functioning. Then, Shannon colluded with her parents to disrupt the business and to diminish the income of the business by setting up a competing company. These acts were done in a calculated and malicious manner designed to cause financial harm to the business and to Gary Auritt. The competing business has developed and manufactured the same or very similar products (shower heads), targeted the large customer accounts relied upon by Gary Auritt, and has marketed itself in a manner purposely designed to cause confusion and to attract customers who would otherwise do business with Gary Auritt's pre-existing [shower head] business."

32. In particular, Judge Darvin noted in the divorce judgment that: "The court specifically finds that the testimony of Shannon Auritt regarding the establishment and operation of the [shower head] business is not credible."

33. On September 19, 2013, approximately 4 months after the divorce proceedings had begun, Kathleen Hamilton or one of her agents registered with the Florida Secretary of State a limited liability company by the name of Take A Shower LLC.

34. Since the divorce, Take A Shower LLC and its agents including Shannon Auritt have caused Plaintiff Gary Auritt's shower head

business to drastically contract.

35. Defendant Kathleen Auritt, or one of her agents, filed an application with the U.S. Patent and Trademark Office for the mark “Fire Hydrant Spa Shower Heads” falsely claiming that her family established a shower head business in 1949.

36. On July 19, 2018, 2 days before the divorce judgment barring Defendant Shannon Auritt’s involvement in the shower head business was to expire, and just 2 months after telling the a post divorce court in Portland, Maine she did not know if she was going into the family shower head business, Defendant Shannon Auritt became both the registered agent and CEO of Take A Shower LLC.

37. On August 2, 2018, Plaintiff Gary Auritt wrote a cease and desist letter to Attorney Daniel T. Earle, who was prosecuting the trademark application for Take A Shower LLC with the U.S. Patent and Trademark Office. Among other things, Plaintiff Gary Auritt informed Attorney Earle that his clients were filing a fraudulent application with the U.S. Patent and Trademark Office, asking them to stop using takeashower.com, and refrain from using the term “Fire Hydrant Shower Head” or any variant thereof, attaching a copy of his divorce judgment.

38. Defendant Kathleen Auritt then became CEO and registered agent for Defendant Take A Shower, which continues to

operate a shower head business to the detriment of Plaintiff Gary Auritt.

39. Essentially, Take A Shower LLC is a sham limited liability company set up to allow Defendant Shannon Auritt to run the shower head business through her mother so that Defendant Shannon Auritt can claim welfare benefits such as food stamps and MaineCare for her children while living in her parent's upscale home in Cape Elizabeth, Maine.

40. Defendant Take A Shower LLC has registered the domain name "take-a-shower.com", which then diverts internet traffic to its website highpressureshowers.com. On the latter website it states: "Don't be fooled of other companies claiming that they have the Original Fire Hydrant Spa Series ©™ of Shower Heads for Low Water Pressure."

BACKGROUND

COUNT 1 – FEDERAL UNFAIR COMPETITION (15 U.S.C. § 1125(a) & (d))

41. Plaintiff repeats the allegations set forth in the preceding paragraphs.

42. The Defendants use of the term or name "Fire Hydrant Spa Shower Head" and the use of the company name "Take A Shower LLC" and the bad faith registration of the website "take-a-shower.com" in the sale or marketing of shower heads is confusing and deceiving purchasers of shower heads who are diverted to Defendants' website and

believe that Plaintiff Gary Auritt is somehow affiliated or connected with Defendants.

43. Such conduct by Defendants constitutes unfair competition which has damaged Plaintiff Gary Auritt and unless such conduct by Defendants is enjoined, Plaintiff Gary Auritt will suffer further irreparable harm.

COUNT 2 – DECLARATORY RELIEF
(28 U.S.C §§ 2201 ET SEQ.)

44. Plaintiff repeats the allegations set forth in the preceding paragraphs.

45. Prior to meeting Defendant Shannon Auritt, Plaintiff Gary Auritt originated the term and mark Fire Hydrant Shower Heads to identify and distinguish his shower head goods.

46. Defendants had never used the term or mark Fire Hydrant Spa Shower Head prior to meeting Plaintiff Gary Auritt. Nor were Defendants in the shower head business prior to meeting Plaintiff Gary Auritt.

47. Defendant Take A Shower LLC and the other Defendants have wrongfully filed a pending trademark application for the mark Fire Hydrant Spa Shower Heads in conjunction with the sale or marketing of shower heads.

48. An actual controversy exists between Plaintiff and

Defendant Take A Shower LLC regarding the Defendant Take A Shower LLC's pending trademark application for the mark Fire Hydrant Spa Shower Head or a derivation thereof.

49. Plaintiff Gary Auritt seeks, and is entitled to, a judicial declaration that none of the Defendants are entitled to the federal or state trademark Fire Head Spa Shower Head or similar derivations thereof in association with the sale or marketing of shower heads.

**COUNT 3 – STATE UNFAIR COMPETITION
(10 M.R.S. § 1212)**

50. Plaintiff repeats the allegations set forth in the preceding paragraphs.

51. The confusingly similar name “Fire Hydrant Spa Shower Head” constitutes a deceptive trade practice within the meaning of the statute because Defendants are using this term to pass off their shower heads as those of Plaintiff Gary Auritt.

52. Defendants use of the term or mark “Fire Hydrant Spa Shower Head” constitutes a deceptive trade practice within the meaning of the statute, causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, Plaintiff Gary Auritt, regarding the sale and marketing of their shower heads.

53. Such conduct by Defendants constitutes unfair

competition with Plaintiff Gary Auritt and unless such conduct by Defendants is enjoined, Plaintiff Gary Auritt will suffer irreparable harm.

**COUNT 4 – STATE DILUTION
(10 M.R.S.§ 1530)**

54. Plaintiff repeats the allegations set forth in the preceding paragraphs.

55. Defendants are causing injury to the business reputation of Gary Auritt by diluting the distinctive quality of his common law mark or trade name Fire Hydrant Shower Head pertaining to the sales and marketing of shower heads.

56. Such conduct by Defendants constitutes unfair competition with Plaintiff Gary Auritt and unless such conduct by Defendants is enjoined, Plaintiff Gary Auritt will suffer irreparable harm.

RELIEF

57. As a result of the above claims, Plaintiff Gary Auritt requests the following from this court:

A. enjoin Defendants from using the term “Fire Hydrant Spa Shower Head” or a similar sounding name, term or mark, pertaining to the sale or marketing of shower heads; enjoin the Defendants from using the name “Take A Shower LLC” for their business and also enjoin the Defendants from continuing to register the domain name “take-a-shower.com”;

- B. issue a Declaratory Judgment that Take A Shower LLC's federal application for the trademark "Fire Head Spa Shower Head" is invalid;
- C. award reasonable attorneys fees, expenses, and prejudgment interest (through statutory authority or as an exceptional case under 35 U.S.C. § 285); and
- D. award damages and other relief as the court deems just.

NOVEMBER 14, 2018

/S/ ANDRE J. HUNGERFORD
MAINE BAR # 9416
HUNGERFORD LEGAL P.C.

P.O. Box 7584
PORTLAND, MAINE 04112-7584
207-221-5112
AJ@HUNGERFORD.LEGAL